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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

06 CR 911 (WHP)

5 DERRILYN NEEDHAM,

6 Defendant.

Sentencing

7 -----x

New York, N.Y.
December 12, 2019
3:15 p.m.

9
10 Before:

11 HON. WILLIAM H. PAULEY III,

12 District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 United States Attorney for the
Southern District of New York

16 BY: LAURIE KORENBAUM

Assistant United States Attorney

17 DAVID STERN, ESQ.

18 Attorney for Defendant

19 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

20 JASON SER

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1 (Case called)

2 THE COURT: Good afternoon. Please be seated.

3 THE DEPUTY CLERK: Appearances.

4 MS. KORENBAUM: Good after afternoon, your Honor.

5 Laurie Korenbaum for the government.

6 THE COURT: Good afternoon, Ms. Korenbaum.

7 MR. STERN: Good afternoon. David Stern for Ms.

8 Needham.

9 MR. SER: Good afternoon, your Honor. Certify for Ms.

10 Needham.

11 THE COURT: I note the presence of Ms. Needham at
12 counsel table.

13 This matter is once again on for resentencing. Are
14 the parties ready to proceed?

15 MS. KORENBAUM: The government is ready, your Honor.

16 MR. STERN: We are.

17 THE COURT: Mr. Stern and Mr. Ser, you reviewed with
18 your client the supplemental presentence report?

19 MR. STERN: We have.

20 THE COURT: Once again are there any factual matters
21 in the report that you believe warrant modification or
22 correction?

23 MR. STERN: There are no factual corrections that we
24 think need correction.

25 THE COURT: Ms. Korenbaum, are there any factual

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1 matters in the report that the government believes warrant
2 modification or correction?

3 MS. KORENBAUM: No, your Honor.

4 THE COURT: Now, I have received the submissions of
5 the parties.

6 First, does the government have a motion here?

7 MS. KORENBAUM: Your Honor, I discussed this with
8 defense counsel before and we think the government may need to
9 renew its motion under Section 5K1.1 and 18 U.S.C. 3553(e),
10 which were the motions that was made at the original
11 sentencing. To the extent that is necessary, we do that now.
12 We also have a motion that the defendant be resentenced under
13 the other counts of conviction, not including the gun count.

14 THE COURT: Is the government moving to vacate Count
15 14?

16 MS. KORENBAUM: Yes, your Honor.

17 THE COURT: Mr. Stern or Mr. Ser, do either of you
18 wish to be heard?

19 MR. STERN: Yes, I do.

20 THE COURT: If you would take the podium.

21 MR. STERN: Okay.

22 THE COURT: Thank you.

23 MR. STERN: Judge, we think there may have been two
24 gun counts that may have been vacated, not one, but we're not
25 sure. I am not sure it makes any principle difference anyway,

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1 Judge, so I will go ahead. If we think there is something to
2 be added on that subject, we will.

3 THE COURT: All right.

4 MR. STERN: Judge, after she was last before you for
5 sentencing, Ms. Needham had no reason to ever think she would
6 see you again. That is, it seemed like the final sentencing
7 for her. At that time you had concerns about her behavior in
8 jail. That is what drove your sentence and appropriately so.
9 When she got back to jail where she has now been for 16 years,
10 her behavior really changed. I think you know from our
11 submission that she stopped doing the things you said she
12 shouldn't do and began to do almost exclusively productive
13 things, and that was purely a personal decision.

14 We sometimes say about clients they are doing this or
15 that because they know they will be in front of a judge one day
16 and that judge, he or she, will take into consideration their
17 behavior; but that wasn't the case with her. She had no reason
18 to think she would ever be here again and yet she did all the
19 things you had wished she had done in the first place. That
20 is, she took courses to improve herself. She worked hard in
21 various jobs. She has an exemplary work history. She did
22 something that many of my clients can't. She kept contact with
23 her family and friends which is a real accomplishment from
24 jail. Lots of people get beaten downs and their friends and
25 family people drift away, but that didn't happen to her as you

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1 know from the letters we provided you with.

2 Maybe most strikingly in her case she was a productive
3 and positive member of the prison community. You have letters
4 from other young women whom she not only nurtured but who she
5 encouraged not to be like her to whom she said things like,
6 *Look what happened to me. Don't let this happen to you. Go*
7 *home, be a law-abiding citizen, and do what you are supposed*
8 *to.* She also looked to the future. She began to be a
9 religious person. She began to think about what work she would
10 do when she got out of jail, whenever that might be. All of
11 that was done on her own. That is because she thought that is
12 what she should do.

13 I've known her now for 16 years, which is shocking to
14 say but true. I've began representing her 16 years ago. I was
15 49 then and she was 36. Some measure of how much our lives
16 changed in 16 years is that my son was a child then and he is
17 now a lawyer. She was a young, tough criminal who made a
18 decision through her cooperation to leave that life of crime
19 behind. Now she is a middle-aged woman seeking a chance to
20 spend her remaining years, and I hope there are many, with her
21 family and forging her way in the world legally.

22 All the goals of putting her in jail have been
23 fulfilled. She has been punished not only in ways that were
24 intended, that is, the loss of her freedom; but in ways that
25 were never intended or contemplated and that is by being

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1 sexually violated by one of the people who were supposed to not
2 only keep her in jail but to keep her safe. She's missed the
3 birth of her grandchildren and the adulthood of her children
4 and has watched her mothers and aunts grow old without being
5 able to help them. That is by any measure severe punishment.

6 To the extent her sentencing sent a message, anyone
7 who knows what happened to her has been educated in two ways.
8 First anyone who contemplates following a criminal path will
9 think twice. They will know that she lost the sweetest and
10 most productive years of her life to crime; but a second
11 message has been sent and that is if you engage in crime and
12 then cooperate, there is a benefit. They will hear although
13 she did some truly horrible things, she renounced that life and
14 did what she could to working by atone to testifying. As a
15 result she was given by you a second chance at life.

16 She is rehabilitated. We sometimes lose sight of that
17 and we think we're just punishing people. She is in fact by
18 some miracle rehabilitated. There is no question that she
19 wasn't a perfect prisoner to begin with, but she has reached a
20 place in life now where she prides herself on honest work,
21 doing a good job and staying out of trouble. I think the most
22 telling thing is her evaluation from just before she was
23 brought back to New York in October -- and we made that part
24 the sentencing package, but if I may I want to read the last
25 line of it in which her supervisor or corrections person says:

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1 In closing I would like to restate my strong support
2 for Ms. Needham's application to any role as she was
3 kind, professional and extremely knowledgeable in this
4 department. I am confident that she will surpass your
5 expectations in this new role. Ms. Needham is driven,
6 self-confident, proactively helpful and smart and I
7 know that she will continue to find success with all
8 she does.

9 And I think it is fair to say having been a lawyer for quite a
10 while that I have never gotten a letter from a prison with that
11 kind of glowing recommendation.

12 Derrilyn and I have had lots of conversions over the
13 years and I don't think it violates the attorney-client
14 privilege to say that she has told me not knowing that she
15 would be resentenced how deeply she regrets the things she did
16 that brought her here. Not because she ended up here, but
17 because of the pain she caused others. She can barely
18 recognize the person she was then and has reinvented herself as
19 a different and better person. That is what jail is for in the
20 end, so that people learn the wrongfulness of their acts and
21 change. She has done that and more and I hope has earned a
22 sentence to the equivalent of time-severed. In this case that
23 would be 97 months and that is what we ask your Honor to
24 impose.

25 THE COURT: In your submission to the Court, you refer

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1 to the possibility that she may be deported upon the completion
2 of her sentence.

3 Is there a detainer lodged against her?

4 MR. STERN: There is a detainer. We're trying to
5 figure out what to do about it because we think she will be at
6 great risk if she goes back to Jamaica. The answer is in all
7 likelihood she will be deported.

8 THE COURT: All right. Thank you.

9 MR. STERN: Anything else, your Honor?

10 THE COURT: No.

11 MR. STERN: Thank you.

12 THE COURT: Ms. Korenbaum.

13 MS. KORENBAUM: Your Honor, the government takes no
14 position as to how the Court will exercise its discretion in
15 this matter. Unless you have questions for me, your Honor.

16 THE COURT: Has the government taken any position with
17 respect to her potential deportation upon the completion of any
18 sentence?

19 MS. KORENBAUM: We've taken no steps and had no
20 discussions, your Honor.

21 THE COURT: Ms. Korenbaum, are there any victims
22 present in the Court who wish to address the Court?

23 MS. KORENBAUM: No, your Honor. The victims in this
24 case we haven't been able to contact. It has been many years
25 as you know since they were in your courtroom before.

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1 THE COURT: Mr. Stern, does your client wish to
2 address the Court before sentence is imposed?

3 MR. STERN: She would like to, your Honor.

4 THE COURT: She can remain seated. Just pull the
5 microphone to her.

6 THE DEFENDANT: I just want to -- I just want to
7 apologize to everyone who are victimized by my actions. I have
8 changed and I just want a chance to prove I have changed. I
9 have turned my life around and it is something that I wanted to
10 do. Because what you said to me at sentencing, it stayed with
11 me. I slept with it and I woke with it, because I know it was
12 true. The words that you used to describe me I looked into
13 myself and I realized, you know what, he is right and I have to
14 change. And I have done everything that I can because I
15 really, really wanted to live a different life and be a
16 different person.

17 Today I just don't -- I am a different person. I am
18 the not the person. I don't care how I started out, I want to
19 finish well. I really, really want to give back to society
20 everything that I took from it. I just -- I am asking you to
21 just believe in me this one last time, that I am going to make
22 right everything that I made wrong. And I just am so sorry and
23 I just ask for forgiveness.

24 THE COURT: The defendant, Derrilyn Needham, comes
25 back before this Court once again for resentencing, this time

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1 in view of the Supreme Court's decision in *United States v.*
2 *Davis*, 139 S. Ct. 2319 (2019).

3 This Court has rereviewed the presentence report and
4 the supplemental report as well as the submissions of the
5 parties. I adopt the findings of fact in the presentence
6 report as my own and once again will cause the supplemental
7 report to be docketed and filed under seal as part of the
8 record in this case.

9 The Section 924(c) count of conviction in this case
10 was predicated on Ms. Needham's participation in a conspiracy
11 to commit Hobbs Act robbery. The parties agree that Ms.
12 Needham's conviction on this count must be vacated because a
13 conspiracy to commit Hobbs Act robbery qualifies as a crime of
14 violence under 18, U.S.C., Section 924(c)(3) only under the
15 residual or risk of force clause of that statute, which has
16 been declared unconstitutionally vague.

17 Now, in preparing for this resentencing today, I've
18 reviewed as I said the supplemental presentence report filed on
19 October 17, 2019; the submissions of the parties; the
20 transcript of the original sentencing of December 14, 2012; the
21 resentencing that occurred on March 29, 2017, as a consequence
22 of the government's Rule 35 application; and all the papers
23 previously submitted in connection with those proceedings.

24 This review rekindles this Court's memories of the
25 gripping evidence at trial in this case and the poignant

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1 statements from victims at the original sentencing. As I
2 observed at the resentencing more than three years ago, I had
3 vivid memories about this case then and I have vivid memories
4 about this case now. The resentencing in March of 2017 stemmed
5 from a heinous crime committed against Ms. Needham while she
6 was in the custody and care of the Bureau of Prisons. The
7 criminal justice system could not ever have intended for her to
8 suffer at the hands of her jailer. The Rule 35 resentencing in
9 March 2017 dramatically reduced the length of Ms. Needham's
10 sentence. This resentencing is precipitated by the *Davis*
11 decision, which involves a wholly different calculus.

12 First, *Davis* has no affect on the guidelines
13 calculation for indictments 04 CR 196 and 04 CR 1036. This
14 Court previously resentedenced Ms. Needham on those indictment
15 numbers to 120 months of imprisonment to run concurrently and
16 to be followed by three years of supervised release also to run
17 concurrently with each other and subject to the standard
18 conditions of supervised release and certain special conditions
19 that I need not describe here.

20 Turning to Docket No. 06 CR 911, Ms. Needham pled
21 guilty to 16 counts. One of those counts, Count 14, the use of
22 a firearm during a crime of violence under 18, U.S.C., Section
23 924(c) is the reason why we're here today and her conviction on
24 that count is vacated. Revisiting the guideline calculations
25 as I described them at the December 14, 2012, sentencing, the

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1 crime of conspiracy to commit Hobbs Act robbery and the
2 substantive robberies at Ely Avenue in July of 2002; Baychester
3 Avenue in September of 2002; Prince George's County, Maryland,
4 in September of 2002; Cross Avenue in February of 2003;
5 Rosedale Heights in May of 2003; and Holland Avenue in May of
6 2003 are grouped together as Group 1. The base offense level
7 for Group 1 is 20. Because it involved the possession of a
8 firearm by an accomplice, five levels are added. Because there
9 was injury to a victim, I add an additional two levels.
10 Because there was the taking of a controlled substance, I add
11 one additional level. Because the total loss involved
12 \$1,179,000 I add an additional four levels making a total
13 offense level for Group 1 of 32.

14 Group 2 consists of the Hobbs Act robbery conspiracy
15 and attempted robberies in Queens County during the summer of
16 2002, Burke Avenue in August of 2002, and East 224th Street and
17 Boston Road in November of 2003. The base offense level is 20.
18 Because these offenses involve the discharge of a firearm by an
19 accomplice, an additional seven levels is added. Because it
20 involved the taking of a controlled substance, an additional
21 level is added making a combined total offense level for Group
22 2 of 28.

23 Group 3 is Count Seven, the use of a firearm during
24 the commission of a crime of violence resulting in murder at
25 194 Locustwood Boulevard on August 31, 2002. The total offense

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1 for level for Group 3 is 43.

2 Group 4 is Count Eight and Thirteen, which charged
3 Hobbs Act robbery and murder at 4385 Wickham Avenue on
4 January 21, 2003. Here again the total offense level is 43.

5 Group Five is Count 15, which charged illegally
6 dealing in firearms. The base offense level is 24. Because
7 this offense involved the receipt of more than 25 firearms, six
8 levels are added. Because it involved trafficking in firearms,
9 an additional four levels are added. So the total offense
10 level for Group 5 is 34.

11 Finally with respect to Group 6, the marijuana
12 conspiracy, the total offense level is 32. Applying the
13 multiple-unit adjustment as I did back in December of 2002, two
14 levels are added to the highest offense level and according the
15 combined adjusted offense level is 45.

16 Ms. Needham accepted responsibility and accordingly I
17 granted her a three-level reduction, which I do so again for
18 purposes of this calculation making her total offense level 42.

19 Her criminal history category is a six. So Ms.
20 Needham's guideline range is 360 months to life in prison.

21 The government once again moves for a downward
22 departure for substantial assistance. If that motion was even
23 necessary in this proceeding, I grant it. I am not going to
24 repeat all the details that I described in the earlier
25 sentencing proceedings regarding her cooperation and assistance

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1 to the government. Suffice it to say that I was the trial
2 judge and I saw everything that went on and read everything
3 that was put before me.

4 Now, originally this Court sentenced Ms. Needham
5 principally to 360 months and lifetime supervised release
6 concurrent with the sentences previously imposed in 04 CR 196
7 and 04 CR 1036. That sentence represented a very significant
8 downward departure for substantial assistance to the government
9 in 06 CR 911. On resentencing in March of 2017, this Court
10 granted the government's Rule 35 motion and reduced Ms.
11 Needham's sentencing to 160 months of imprisonment to be served
12 consecutively to the 120-month sentence imposed in 04 CR 196
13 and 04 CR 1036 and lifetime supervised release.

14 That sentence was fashioned in such a way as to take
15 account of a miscalculation by the BOP in how Ms. Needham's
16 sentences were to be run. So I effectively reduced what BOP
17 had calculated to be 36-year sentence to a 20-year sentence
18 making Ms. Needham's current scheduled release date October 15,
19 2024, as I understand it.

20 Ms. Needham's counsel now seeks a sentence of
21 time-served arguing that her new sentencing range of 360 months
22 to life is significantly lower than her range in 2012, which
23 was 660 months to life. That argument only has superficial
24 appeal because this Court granted the government's motion for a
25 downward departure for substantial assistance and therefore

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1 this Court was not bound to any of the guidelines or any
2 mandatory minimum sentence at the time I originally sentenced
3 her.

4 Counsel also argues that Ms. Needham had been in
5 continuous BOP custody for nearly 16 years and that she is, and
6 I quote, "Trending well as an inmate subsequent to her last
7 appearance before the Court in March of 2017." Well, 16 years
8 is a lengthy term of incarceration and it does appeal that
9 Ms. Needham is finally making the appropriate adjustments in
10 her life and to incarceration and seeking to improve herself.
11 We must all keep in mind the gravity of Ms. Needham's crimes.
12 She was, as I said in the prior proceeding, a one-woman crime
13 wave. She was also the mastermind behind an organized and
14 vicious robbery crew. She knew precisely what she was
15 unleashing when she orchestrated the home invasions of Robert
16 DeLeon and Gary Gray. And outside of those two robberies, each
17 of which involved a murder, Ms. Needham was involved in a
18 multitude of other robberies that involved firearms and the
19 threat of deadly force. She also pled guilty to trafficking in
20 a huge number of firearms that we have no idea whose hands they
21 fell into or what damage they've done. In short, Ms. Needham
22 is as dangerous a person this Court has ever encountered.

23 Now, I've had multiple opportunities to review the
24 defendant's personal characteristics, criminal background and
25 the nature and particulars of her crimes. For virtually her

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1 entire life, she demonstrated a history of antisocial behavior
2 that is appalling in the extreme. More eventually, Ms. Needham
3 has made genuine efforts to improve herself and curb her
4 antisocial impulses. BOP supervisors in Florida report on her
5 constructive efforts at rehabilitation, including her placement
6 in the honor dorm back in July. These are very encouraging
7 signs for the Court, and I truly hope she is on the path to
8 returning to society, presumably in Jamaica, as a productive
9 and law-abiding person; but the crimes for which Ms. Needham
10 stands convicted before this Court are among the most egregious
11 that any human being could commit and she has a further path to
12 travel before she is reintegrative into society.

13 To suggest that a sentence on all of these crimes of
14 time-served is appropriate in my view is beyond the pale here;
15 but I do believe that a modest reduction in her sentence is
16 appropriate to reflect her efforts at rehabilitation. While
17 Ms. Needham and her family have undoubtedly suffered as a
18 result of her incarceration and she's missed, as counsel's
19 described it, the birth of grandchildren and other entirely
20 joyous family events, she and her family can at least
21 communicate with each other, see each other, and know that at
22 some day they will be reunited. The murder victims and their
23 families, however, will never be reunited at least in this life
24 and their emotional statements still reverberate in this
25 courtroom.

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1 So is it against that backdrop that this Court's
2 prepared to resentence Ms. Needham, and I would ask her to
3 stand at this time.

4 Ms. Needham, I truly hope that you are on the right
5 path. I cannot bring myself to sentence you to time-served.
6 That would be unjust here and would not fulfill the promise of
7 the criminal justice system and the need to ensure that
8 fairness and justice are done. So it is my judgment that you
9 be sentenced to a term of 154 months of imprisonment to be
10 followed by lifetime supervision assuming you are in the United
11 States subject to all of the it standard conditions of
12 supervised release and the following special conditions:

13 First, that you submit your person and any property,
14 residence, vehicle, papers, computer, or other electronic
15 communications, data storage devices, cloud storage, or media
16 and effects to a search by any U.S. Probation officer and if
17 needed with the assistance of any law enforcement. The search
18 is to be conducted when there is a reasonable suspicion
19 concerning a violation of a condition of supervised release or
20 unlawful conduct by you. Failure to submit to such a search
21 may be grounds for revocation and so you are to inform any
22 other residence, users or interested parties that the premises
23 or property may be subject to search pursuant to this
24 condition.

25 Second, I am going to require you to obey the

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1 immigration laws and comply with all directives of immigration
2 authorities.

3 Finally, I am going to require you to participate in a
4 mental health program approved by the Probation Office. You
5 are to continue to take any prescribed medications unless
6 otherwise instructed by your healthcare provider. You are to
7 contribute to the cost of services rendered that are not
8 covered by third-party payments if you have the ability to pay.
9 And I authorize the release of available psychological
10 evaluations and reports to the healthcare provider.

11 I am not going impose any fine on you. I am going to
12 impose the mandatory special assessment of \$1,500 in this case.

13 I am going to direct the government to refund to the
14 defendant if it has been paid the \$100 special assessment that
15 I imposed on Count Fourteen, the 924(c) count, that has now
16 been vacated.

17 Ms. Needham, this constitutes the sentence of this
18 Court.

19 I advise you once again that you have the right to
20 appeal. I advise you further that if you cannot afford
21 counsel, counsel will be provided to you free of cost. Messrs
22 Stern and Ser, have done a fine job in shepherding this matter
23 through the Johnson proceeding to this resentencing and I am
24 confident that they will advise you further with respect to
25 your appellate rights.

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1 You may be seated.

2 MR. STERN: Judge, can I have one moment, please.

3 (Pause)

4 MR. STERN: Thank you.

5 THE COURT: Anything further?

6 MS. KORENBAUM: Your Honor, we would ask that you
7 reimpose the order of forfeiture that was initially imposed in
8 this case.

9 THE COURT: I consider it done. I reimpose the order
10 of forfeiture as well.

11 Now, I would like to do what I can to ensure that Ms.
12 Needham is returned to the facility in Tallahassee, Florida,
13 from which she was taken to be brought to this proceeding. I
14 previously recommend to the Bureau of Prisons that she be
15 housed in a warm climate because of certain health conditions.
16 I am going to include that condition, but in this particular
17 case I am going to include a recommendation that she be
18 returned to FCI Tallahassee where she seems to be making the
19 very best of her efforts at rehabilitation and earning the love
20 and respect of the people around her.

21 So I think that is very important and that she be
22 brought back there as promptly as possible and I would like
23 counsel to advise me if that is not accomplished so that
24 further measures can be taken to ensure that it does occur.

25 I would say to both sides with respect to

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1 resentencings like this to the extent that others are going to
2 come before me that I would certainly entertain an application
3 to conduct the resentencing by videoconference so that Ms.
4 Needham or other defendants are not put through the dislocation
5 of programs that they are in to be transported back to this
6 district.

7 Anything further?

8 MS. KORENBAUM: Nothing from the government, your
9 Honor.

10 THE COURT: Anything further, Mr. Stern?

11 MR. STERN: No, sir.

12 THE COURT: Ms. Needham, this proceeding is concluded.

13 THE DEFENDANT: Thank you.

14 THE COURT: Have a good afternoon.

15 MS. KORENBAUM: Good afternoon your Honor.

16 THE DEPUTY CLERK: All rise.

17 o0o